**IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL**

Chapter VIII, Rule 32(2) (b)
Description of case

**Appeal from Order No. 484 of 2005**

Date of decision :- 6th November, 2006

A.F.R. (Approved for Reporting)

~~Not Approved for Reporting~~

Date Initials of Judge

**Note :-** Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

**IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL**

**Appeal from Order No. 484 of 2005**

The Oriental Insurance Company Ltd.,
Divisional Office Rajpur Road, Dehradun,
Through Divisional Manager,
The Oriental Insurance Company Ltd.,
Divisional Office, Bhotia Parao,
Haldwani, District Nainital. …… Appellant

Versus

1. Smt. Sunita Devi Panwar,
   W/o Late Sri Meharban Singh Panwar,
   R/o Shyampur Bye-pass, Rishikesh,
2. Master Amit Singh Panwar,
   R/o Shayampur Bye-pass, Rishikesh
   District Dehradun.
   Respondent No. 2 being minor through
   His mother and natural guardian Smt. Sunita Devi Panwar.
3. Sri Virender Kumar S/o Sri Hari Singh,
   R/o Dhoomchakra, Doiwala,
   District Dehradun.
4. Sri Anil Kumar S/o Sri Kishan Singh,
   R/o Manak Vihar, Sahastradhara Road,
   Dehradun. ……. Respondents

Mr. V.K. Kohli, Senior Counsel with Mr. T.C. Pandey, Advocate for the appellant.
Mr. Kishore Kumar, Advocate for respondents Nos. 1 & 2.
Mr. Pramod Belwal, Advocate for respondents Nos. 3 & 4.

**JUDGMENT**

**Coram: Hon'ble Rajeev Gupta, C.J.**
**Hon'ble Rajesh Tandon, J.**

**RAJEEV GUPTA, C. J. (Oral)**

This is insurer's appeal against the Award dated 12.09.2005 passed by Motor Accident Claims Tribunal / Addl. District Judge, Dehradun in Motor Accident Claim Case No. 155 of 2004.

2. The claimants, who are unfortunate widow and minor son of deceased Meharban Singh Panwar, claimed compensation of

Rs. 18,15,000/- for his death in the accident when on 26.05.2004 the scooter bearing registration No. UA-07-2030, on which he was travelling as a pillion rider, met with an accident due to the rash and negligent driving of the scooterist resulting in serious injuries to Meharban Singh Panwar, who succumbed to those injures during the course of his treatment in the hospital on 28.05.2004. The claimants pleaded that deceased Meharban Singh Panwar was getting salary of about Rs. 9,000/- per month from his employer Ace Glass Containers (J.J. Glass Factory), Veerbhadra, Rishikesh.

3. The owner and insurer of the Scooter contested the claim and denied their liability to pay compensation to the claimants. The insurer took the plea that the scooterist was not holding a valid driving license at the time of the accident. The owner of the Scooter, on the other hand, pleaded that the accident did not occur due to the negligence of the scooterist; and as the Scooter was insured with the Insurance Company, the liability to pay compensation to the claimants, if any, would be that of the Insurance Company.

4. The claimants examined PW1 Smt. Sunita Devi Panwar, PW2 Santosh Kumar Upadhyaya and PW3 Harjinder Singh in support of their claim, whereas the scooterist and the owner of the Scooter examined themselves as DW1 and DW2. The insurer of the Scooter, however, did not examine and witness.

5. The Tribunal, on a close scrutiny of the evidence led by the parties, held that deceased Meharban Singh Panwar died on account of the injuries sustained by him in the accident on 26.05.2004; the accident occurred due to the rash and negligent driving of the Scooterist; and the insurer of the Scooter was liable to pay compensation to the claimants.

6. Relying upon the evidence led by the claimants about the income of the deceased, the Tribunal assessed his income at

Rs. 7,200/- per month. By deducting 1/3rd of the said amount as the personal expenses of the deceased, the claimants' dependency was assessed at Rs. 4,800/- per month and Rs. 57,600/- per annum. By multiplying the annual dependency of Rs. 57,600/- with the multiplier of '16', the compensation was worked out to Rs. 9,21,600/-. The Tribunal awarded further sums of Rs. 3,000/- towards Funeral Expenses and Rs. 5,000/- for Loss of Consortium to the widow. Thus, a total sum of Rs. 9,29,600/- was awarded as compensation to the claimants for the death of Meharban Singh Panwar in the accident. The Tribunal, further, directed the insurer of the Scooter to pay interest on the above amount of compensation at the rate of 5% per annum.

7. Mr. V.K. Kohli, the learned Senior counsel for the appellant Insurance Company submitted that the Tribunal has erred in taking into consideration certain allowances, which are to be excluded, while assessing the income of the deceased at Rs. 7,200/- per month; in selecting the higher multiplier of '16'; and in awarding higher compensation of Rs. 9,29,600/- to the claimants.

8. Mr. Kishore Kumar, the learned counsel for respondents Nos. 1 & 2 (claimants), on the other hand, supported the Award and submitted that the compensation of Rs. 9,29,600/- awarded by the Tribunal is just and proper compensation in the facts and circumstances of the present case.

9. Mr. Pramod Belwal, the learned counsel for respondents Nos. 3 & 4 (Scooterist and the owner of the Scooter) also supported the Award.

10. The findings recorded by the Tribunal that deceased Meharban Singh Panwar died on account of the injuries sustained by him in the

accident and that the accident occurred due to the rash and negligent driving of the Scooterist are based on the eye-witness account of PW3 Harjinder Singh, who has categorically deposed that the accident occurred due to the rash and negligent driving of the Scooterist. On a close scrutiny of the evidence of PW3 Harjinder Singh, we are satisfied that the Tribunal has rightly relied upon his evidence on recording the above findings. We, therefore, affirm the findings recorded by the Tribunal in that behalf.

11. As the accident occurred due to the rash and negligent driving of the Scooterist and the Scooter, at the relevant time, was insured with the appellant Insurance Company, the Tribunal has rightly held the insurer of the Scooter liable to pay compensation to the claimants.

12. Now, we shall examine as to whether the compensation of Rs. 9,29,600/- awarded by the Tribunal is just and proper in the facts and circumstances of the present case.

13. The salary certificate, produced before the Tribunal, contains the following break-up of the gross salary of Meharban Singh Panwar:

| | | | |
|---|---|---|---|
| 1. | Basic Salary | = | Rs. 3358.00 |
| 2. | Dearness Allowance | = | Rs. 1349.50 |
| 3. | House Rent Allowance | = | Rs. 475.00 |
| 4. | Leave Travel Assistance | = | Rs. 400.00 |
| 5. | Washing Allowance | = | Rs. 200.00 |
| 7. | Special Allowance | = | Rs. 1211.00 |
| 8. | Conveyance Allowance | = | Rs. 440.00 |
| 9. | Attendance Bonus | = | Rs. 280.00 |
| | **TOTAL** | **=** | **Rs. 7713.50** |

14. The Tribunal, apparently, has fallen into error in taking into consideration all the allowances payable to the deceased while

assessing his income at Rs. 7,200/- per month. In our opinion, the amounts, which were being paid to the deceased as Basic Salary, Dearness Allowance and House Rent Allowance, alone, ought to have been taken into consideration while assessing the income of the deceased. The total of the amounts paid to the deceased under these three heads comes to Rs. 5,182.50/- per month. We, therefore, propose to re-compute the compensation taking the income of the deceased at Rs. 5,000/- per month and Rs. 60,000/- per annum.

15. By deducting 1/3$^{rd}$ of Rs. 60,000/- as the personal expenses of the deceased, the claimants' dependency is assessed at Rs. 40,000/- per annum.

16. The Tribunal selected the multiplier of '16' considering that deceased Meharban Singh Panwar was aged about 30 years, whereas his widow claimant No. 1 Smt. Sunita Devi Panwar was 26 years of age and his minor son claimant No. 2 Master Amit Singh Panwar was aged about 8 years on the date of the accident.

17. Mr. V.K. Kohli, the learned Senior Counsel for the appellant Insurance Company, relying upon the dictum of the Apex Court in the case of **T.N. State Transport Corpn. Ltd. Vs. S. Rajapriya and others** reported in **(2005) 6 Supreme Court Cases 236,** vehemently argued that the Tribunal has erred in selecting the higher multiplier of '16'.

18. Mr. Kishore Kumar, the learned counsel for the claimants, on the other hand, placing reliance on the dictum of the Apex Court in the case of **Kanhaiyalal Kataria & others Vs. Mukul Chaturvedi & others** reported in **(2005) 12 SCC 190** submitted that the multiplier of '16' selected by the Tribunal, considering the age of the deceased, his widow and minor son, is appropriate in the case.

19. Considering the dictum of the Apex Court in the case of Kanhaiyalal Kataria & others (supra) and the fact that the widow of the deceased is only 26 years of age and his minor son will take at least 16 years to become an earning person, we are of the opinion that multiplier of '16' selected by the Tribunal cannot be found fault with.

20. By multiplying the annual dependency of Rs. 40,000/- with the multiplier of '16', the compensation works out to Rs. 6,40,000/-. By adding Rs. 3,000/- awarded by the Tribunal towards Funeral Expenses and Rs. 5,000/- towards Loss of Consortium to the widow, the claimants become entitled to receive total sum of Rs. 6,48,000/- as compensation for the death of Meharban Singh Panwar in the accident.

21. The Tribunal has awarded interest at the lower rate of 5% per annum. In our opinion, the interest ought to have been awarded at the rate of 7% per annum. With a view to avoid any possible delay in the computation of the amount of interest by the Claims Tribunal, we deem it proper to quantify the amount of interest ourselves. The accident, in the present case, took place on 26.05.2004 and the claim petition was filed on 26.07.2004. The impugned Award was passed by the Tribunal on 12.09.2005 and the appellant Insurance Company deposited a sum of Rs. 4,75,000/- (Rupees Four Lakhs and Seventy Five Thousand only), in compliance of the interim order passed by this Court on 28.10.2005, on 18.11.2005. Taking all the above relevant factors into consideration, we quantify the amount of interest at Rs. 52,000/- (Rupees Fifty Two Thousand only).

22. Thus, the claimants become entitled to receive a total sum of Rs. 7,00,000/- (Rupees Seven Lakhs only) [Rs. 6,48,000/- towards Compensation + Rs. 52,000/- towards Interest).

23. For the forgoing reasons, the appeal filed by the appellant Insurance Company against the Award is allowed in part. The compensation of Rs. 9,29,600/- awarded by the Tribunal is modified to Rs. 6,48,000/- (Rupees Six Lakhs and Fourty Eight Thousand only) with further quantified amount of interest at Rs. 52,000/- (Rupees Fifty Two Thousand only).

24. The appellant Insurance Company has deposited a sum of Rs. 4,75,000/- (Rupees Four Lakhs and Seventy Five Thousand only) before the Claims Tribunal on 18.11.2005. A sum of Rs. 25,000/- (Rupees Twenty Five Thousand only) was deposited by the appellant Insurance Company as mandatory deposit under Section 173 of the Motor Vehicles Act while filing this appeal. The appellant Insurance Company is directed to deposit the balance amount of Rs. 2,00,000/- (Rupees Two Lakhs only) before the concerning Claims Tribunal within a period of two months from today. The sum of Rs. 25,000/- (Rupees Twenty Five Thousand only) deposited by the appellant Insurance Company as mandatory deposit be transmitted to the concerning Claims Tribunal immediately. The amount of compensation shall be disbursed by the Claims Tribunal as per the directions contained in the Award.

25. No order as to costs.

**(Rajesh Tandon, J.)** 06.11.2006

**(Rajeev Gupta, C.J.)** 06.11.2006

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